

**NOTICE OF PROPOSED AMENDMENT OF REGULATION AND
STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

DATE: December 20, 2002

TO: ALL STATE AND LOCAL AGENCIES, EMPLOYEE
ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S
CABINET

SUBJECT: Proposed Amendment to Title 2, California Code of
Regulations § 52.4

The State Personnel Board (SPB) is proposing to amend Rule 52.4, Expedited Hearings. The existing rule permits a party, who has appealed to SPB from a dismissal, with the concurrence of the other party, to obtain an expedited hearing and decision. The proposed amendment, which reflects SPB's response to public comments regarding a previous proposal to amend Rule 52.4 that was heard before the five-member State Personnel Board (Board) on May 7, 2002, would modify the existing rule to permit an appellant, who has appealed to SPB from a dismissal, to request an expedited evidentiary hearing before a SPB administrative law judge (ALJ) for good cause.

AUTHORITY:

Under the authority established in Government Code (GC) § 18701, SPB proposes to amend § 52.4 under Title 2, Division 1 of the California Code of Regulations (2CCR).

REFERENCE:

These regulations implement, interpret, and/or make specific GC §§ 18670, 18703, 19253.5, 19575, 19585 and 19590.

PUBLIC HEARING:

Date and Time: February 3, 2003, from 10:15 to 10:45 a.m.

Place: State Personnel Board
801 Capitol Mall, Auditorium
Sacramento, CA 95814

Purpose: To receive oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close February 3, 2003, at 5:00 p.m. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by SPB, the person identified below must receive written comments before the close of the forty-five (45) day comment period.

Direct written comments to the agency contact person, Steve Unger, at the State Personnel Board (SPB), 801 Capitol Mall, MS 55, Sacramento, CA 95814, or to sunger@spb.ca.gov, or fax comments to his attention at (916) 653-1280.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/
CONTACT PERSON:**

Copies of the express terms of the proposed action, Statement of Reasons, and all of the information upon which the proposal is based are available upon request from SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to the agency backup contact person, Elise Rose, at the State Personnel Board, (916) 653-1403 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text of the proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least fifteen (15) days before the date the regulation is permanently adopted.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC §§ 18500 et seq.).

GC § 18670 authorizes SPB to hold hearings concerning all matters relating to the enforcement and effect of the Civil Service Act.

GC § 18703 authorizes SPB to provide processes for dismissals, demotions, suspensions, and other adverse action for or in the State civil service in accordance with Article VII of the Constitution of the State of California and the Civil Service Act.

GC § 19253.5 authorizes State employees who have been non-punitively dismissed from State service for medical reasons to file an appeal with SPB challenging the dismissal.

GC § 19575 authorizes State employees who have been punitively dismissed from State service for disciplinary reasons to file an answer with SPB appealing the dismissal.

GC § 19585 authorizes State employees who have been non-punitively dismissed from State service for failure to meet requirements for continuing employment to file an appeal with SPB challenging the dismissal.

GC § 19590 authorizes State managerial employees who have been punitively dismissed from State service for disciplinary reasons to file an appeal with SPB challenging the dismissal.

Existing 2CCR, § 52.4, permits a party, who has appealed to the SPB from a dismissal, with the concurrence of the other party, to obtain an expedited hearing and decision. The proposed amendment would modify the existing rule to permit an appellant, who has appealed to SPB from a dismissal, to request an expedited evidentiary hearing before a SPB ALJ for good cause. The ALJ may grant the request if either the department concurs or the ALJ finds that good cause exists. If the ALJ grants the request, the ALJ may impose such orders for expedited discovery as the ALJ may deem necessary or appropriate.

IMPACT ON SMALL BUSINESSES:

The proposed regulations will not impact small businesses. The proposed amendments would affect only State agencies and their employees.

LOCAL MANDATE:

This action has no mandate upon local agencies or school districts and, therefore, requires no reimbursement pursuant to Government Code § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Saving to State Agencies

Any additional costs or savings that the proposed amendment may cause for State and applicable local agencies will be negligible.

Impact on Housing Costs

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposals do not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has determined that the proposed action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for the proposal may be obtained from the contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEB SITE:

The text of the proposed amendments in underline and strikeout, as well as the Notice of Proposed Amendment of Regulation and Statement of Reasons, will be on SPB's Web site at www.spb.ca.gov.

STATEMENT OF REASONS:

Existing 2CCR, § 52.4 permits a party, who has appealed to SPB from a dismissal, with the concurrence of the other party, to obtain an expedited hearing and decision. The proposed amendment, which reflects SPB's response to public comments regarding a previous proposal to amend § 52.4 that was heard before the Board on May 7, 2002, would modify the existing rule to permit an appellant, who has appealed to SPB from a dismissal, to request an expedited evidentiary hearing before a SPB ALJ for good cause. The ALJ may grant the request if either the department concurs or the ALJ finds that good cause exists. If the ALJ grants the request, the ALJ may impose such orders for expedited discovery as the ALJ may deem necessary or appropriate.

It is anticipated that this amended process, which eliminates the strict requirement that the non-moving party stipulate to an expedited hearing before such hearing can be conducted, will help ensure that dismissed employees who demonstrate good cause will have better recourse to such a process.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Regulation Amendment

Regulation Governing Expedited Hearings

For this amendment, text added to the regulation is indicated by underline and text deleted from the regulation is indicated by strikethrough.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 52.4. Expedited Hearings.

~~Within ten days of an appeal being filed, either party may request that the consideration of an appeal from dismissal be expedited. If the other party concurs~~ Within ten days after filing an appeal from a dismissal, an appellant may file with the board and serve upon the respondent a written request that the hearing on the appeal be expedited for good cause. Appellant's request shall include documentary evidence and/or sworn declarations in support of the appellant's position. Within seven days after service of appellant's request, respondent shall file its written response to that request and serve that response upon the appellant. Appellant's request may be granted if either the respondent concurs in the request or the administrative law judge determines that good cause exists. The administrative law judge may impose such orders for expedited discovery as the administrative law judge may deem necessary or appropriate. If appellant's request is granted, the matter will be set for hearing within 15 days. The administrative law judge shall prepare the proposed decision within five working days of the hearing for submittal to the board at its next meeting.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections, 18670, 18703, 19253.5, 19575, 19585 and 19590, Government Code.

Expedited Hearings